

medical treatment to relieve her back and neck pain. Claimant requests medical treatment with Glenn M. Amundson, M.D., or Joseph G. Sankoorikal, M.D.

Respondent argues the SALJ's September 14, 2015, Award should be affirmed as the medical evidence in the record supports the SALJ's finding that treatment is not necessary now for an injury that occurred ten years ago. Therefore, claimant should be denied additional medical treatment.

The issue on appeal is whether claimant is entitled to post-award medical treatment for her increasing back, neck and upper extremity pain that she contends is attributable to her October 3, 2005, work accident.

FINDINGS OF FACT

On October 3, 2005, claimant suffered injury involving her neck and low back, with symptoms in her arms. Claimant had a variety of treatments and underwent neck surgery with Dr. Amundson on July 9, 2007. Dr. Amundson performed a C6-7 cervical discectomy and fusion, which was beneficial. On August 22, 2007, claimant reported being essentially pain free. Claimant also requests treatment for low back symptoms at this time. At the October 10, 2007, examination, Dr. Amundson discussed an updated MRI which displayed a degenerative disc at L4-5 and L5-S1. The MRI indicated a protrusion central to left, at L5-S1 and a cyst at S1-2. Dr. Amundson expressed surprise at the right side leg complaints and complete absence of left sided symptomatology. A repeat MRI in May 2008 displayed the cyst and a central disc herniation to the left at L5-S1, again without left side complaints. There was, again, no explanation for claimant's right side complaints. A followup visit on October 3, 2008, detailed an invalid FCE for effort and consistence. Dr. Amundson felt no additional surgery or treatment was warranted at that time. Dr. Amundson released claimant from his care in October 2008 after finding claimant at maximum medical improvement (MMI).

Claimant was examined by Dr. Sankoorikal on multiple occasions in 2006 and 2007. In his report of January 9, 2007, Dr. Sankoorikal described claimant with the disc bulge at C6-7 and mild degenerative disc disease at L5-S1. The lumbar component was listed as nonwork-related.

A settlement hearing was held on July 23, 2009, at which time claimant settled her claim for a 50 percent work disability. Claimant received a lump sum of \$50,000. The option for future medical was left open.

Claimant underwent numerous examinations with a multitude of health care providers over a several year period. The most recent examination was by Dr. Galate on April 17, 2014. Dr. Galate's report of that date details claimant's treatment history and his examination regarding her physical complaints. Dr. Galate determined claimant's cervical problems stemmed from the work accident on October 3, 2005. He determined claimant

was in no need of further medical treatment for her injuries. His report states claimant's medical care had "exceeded appropriate treatment for this injury."¹

Claimant has not seen a doctor since Dr. Galate's examination on April 17, 2014. Claimant indicated she is in need of additional treatment and contends what is in Dr. Galate's report was not what was explained to her at the visit. Claimant also testified that Dr. Amundson told her she needed back surgery, but that she should wait for as long as she could.

Claimant testified that, since her release from care, her problems have worsened. Currently, claimant has burning around her neck and down her right arm, into her fingertips. She testified that when she was first injured she had pain up the back of her neck, over the top of her head and into her right eyeball. She also had symptoms in the area between the shoulder blade and the chest and headaches everyday.

Claimant testified some days are better than others, but she has difficulty holding onto things and with holding her arms outstretched. Trying to pick up any kind of weight makes her pain worse. Claimant denies any problems with her neck or back before the accident. Claimant also denies that, prior to the accident, she had any headaches like what she is now having.

Claimant indicated she smokes marijuana to help calm her, which helps to relax her back when it freezes up, when, she contends, she is unable to move for up to ten minutes. Claimant could not say the epidural injections she received provided any relief, but the physical therapy she received from Dr. Sankoorikal did help.

On January 12, 2015, and July 6, 2015, applications for a preliminary hearing and post-award medical hearing were filed, with the issue in both being additional medical treatment, and a hearing held in both on August 31, 2015. The SALJ issued two decisions, a preliminary Order dated September 3, 2015 and a Post-Award Medical Award dated September 14, 2015, both denying claimant additional medical treatment.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.²

¹ P.A.H. Trans, Cl. Ex. 3 at 7.

² K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.³

K.S.A. 2005 Supp. 44-510k(a)(b) states:

(a) At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post- award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

(b) Any application for hearing made pursuant to this section shall receive priority setting by the administrative law judge, only superseded by preliminary hearings pursuant to K.S.A. 44-534a and amendments thereto. The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment relating back to the entry of the underlying award, but in no event shall such medical treatment relate back more than six months following the filing of such application for post-award medical treatment. Reviews taken under this section shall receive priority settings before the board, only superseded by reviews for preliminary hearings. A decision shall be rendered by the board within 30 days from the time the review hereunder is submitted.

As noted by the SALJ, claimant has been examined and/or treated by a multitude of doctors. Dr. Amundson, claimant's treating physician, found claimant at MMI in 2008, with no need for additional medical treatment. Dr. Galate, the last doctor to examine claimant, determined claimant's current need for treatment was not related to the work injury in 2005.

It is claimant's burden to prove her entitlement to additional medical treatment. Claimant has failed to carry that burden. The Post-Award Medical Award, denying claimant's request for further medical treatment is affirmed.

³ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant has failed to satisfy her burden that she is entitled to further medical treatment from the 2005 work-related accident.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Medical Award of Special Administrative Law Judge Jerry Shelor dated September 14, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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